

In the
Indiana Supreme Court

DELMAS SEXTON, II)	Supreme Court No. 38S00-0507-SJ-313
)	
vs.)	
)	Case No. 38D01-0410-MI-6
INDIANA PAROLE BOARD)	in the Jay Superior Court

ORDER DENYING VERIFIED PETITION TO RECONSIDER

On August 11, 2005, plaintiff petitioned this Court to reconsider its Order of July 30, 2005, in which we considered the certification of this matter here by Clerk of the Jay Superior Court pursuant to Ind.Trial Rule 53.1 for the appointment of a special judge. In our Order, we found Ind.Trial Rule 53.1 did not apply to this case and remanded the case to the Hon. Joel D. Roberts. Plaintiff does not contest our ruling that this case is in the nature of a petition for post-conviction relief to which Ind.Trial Rule 53.1 does not apply, but rather contends that Ind.Trial Rule 53.2, which applies to petitions for post-conviction relief, should control. The motion plaintiff asserts the trial court did not timely rule upon was a motion to dismiss or for summary judgment. The time for ruling on such motions is controlled by Ind.Trial Rule 53.1. State ex rel. Corll v. Wabash Circuit Court, 631 N.E.2d 914. Plaintiff's reliance on Ind.Trial Rule 53.2 is misplaced and therefore his motion to reconsider should be DENIED.

IT IS, THEREFORE, ORDERED that plaintiff's motion to reconsider the Court's Order of July 30, 2005, is DENIED.

The Clerk of this Court is directed to forward notice of this Order to the Hon. Joel D. Roberts, Jay Superior Court, 120 North Court Street, Portland, IN 47371-2116, and to the Clerk of the Jay Superior Court.

The Clerk of the Jay Superior Court is directed to forward notice of this Order to all parties of record in the case below.

DONE at Indianapolis, Indiana, this _____ day of August, 2005.

Randall T. Shepard
Chief Justice of Indiana